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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1948,

No. 223

JOY OIL COMPANY, LTD., PETITIONER,

vs.

STATE TAX COMMISSION

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITION FOR CERTIORARI FILED AUGUST 16, 1948.

CERTIORARI GRANTED OCTOBER 11, 1948.

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CLAIM OF APPEAL

STATE OF MICHIGAN
IN THE SUPREME COURT

JOY OIL COMPANY, LTD.,
Plaintiff and Appellant,

vs. No. 44,000

STATE TAX COMMISSION,
Defendant.

The Plaintiff claims an appeal from the order of the State Tax Commission sustaining the assessment of the Board of Review of the City of Dearborn of an ad volarem tax upon gasoline stored in the City of Dearborn pending trans-shipment to Canada. Appellant takes an appeal in the nature of certiorari.

Dated: January 16, 1948.

Clayton F. Jennings,
Attorneys for Appellant.
Business Address:
1400 Olds Tower Building,
Lansing, Michigan.

APPLICATION FOR LEAVE TO APPEAL

(TITLE OF COURT AND CAUSE)

Now comes the Joy Oil Company, Ltd., a Canadian Corporation, and makes an application for leave to appeal from an order of the State Tax Commission dated December 3, 1947. The applicant respectfully shows to this Court:

1. That on December 3, 1947, the State Tax Commission notified the applicant that pursuant to a hearing held in Detroit on October 31, 1947, it had denied applicant's appeal claiming exemption from the assessed value of gasoline stored in Dearborn, it appearing to the commission that the assessment had been made in compliance with the law in accordance with the opinion of T. Carl Holbrook, Assistant Attorney General, legal counsel for the Commission. The notice and legal opinion referred to is attached hereto and marked Exhibit "A" and "B".

2. That the reasons and grounds of the desired appeal in said cause are as follows:

(a) That the Commission erred in finding that the gasoline purchased at Grand Rapids, Michigan, by a Canadian corporation, transported by rail to Dearborn, Michigan, where it was stored pending trans-shipment by boat to Canada was subject to tax in the State of Michigan notwithstanding the export-import clause of the United States Constitution.

3. That a statement of the proceedings and facts in said cause so far as they are material is hereto annexed.

4. That applicant seeks leave to appeal by appeal in the nature of certiorari.

Dated: December 15, 1947.

Shields, Ballard, Jennings & Bishop,
By Clayton F. Jennings,
Attorneys for applicant,
Joy Oil Company, Ltd.
Business Address:
1400 Olds Tower,
Lansing 8, Michigan.

CONCISE STATEMENT OF PROCEDURE AND FACTS

On April 1, 1947, the Assessors of the City of Dearborn assessed the gasoline stored in the bulk plant leased by the Joy Oil Company Ltd., of Canada within the City of Dearborn at a valuation of $78,780.00. A protest was made to the Board of Review that the gasoline was not subject to assessment and tax for the reason that it was a commodity in foreign commerce. The protest was denied. Whereupon on June 7, 1947, an appeal was taken to the State Tax Commission for the reason that commodities in foreign commerce coming temporarily to rest in Michigan pending trans-shipment to a foreign country are not subject to local taxation; that the assessment and the tax levied pursuant thereto is contrary to Section 9, sub-paragraph (5) and Section 10, sub-paragraph (2), Article I of the Federal Constitution. On December 3, 1947, the State Tax Commission gave notice denying the appeal. A formal order is not entered by the State Tax Commission in such cases but simply a letter giving notice and reasons for denial is sent to the taxpayer.

The Joy Oil Company, Ltd., is a Canadian corporation not authorized to do business in the State of Michigan. It owns no property within the State of Michigan except that on the assessment date of 1947 it had in storage in Dearborn, Michigan, a large quantity of gasoline awaiting trans-shipment to Canada.

The Joy Oil Company, Ltd. had purchased this gasoline from the Midwest Refineries Company of Grand Rapids, Michigan. At the time of purchase, pursuant to Federal statutes, it furnished to the Midwest Refineries Company an Exemption Certificate duly sworn to. It also furnished Temporary Exemption Certificate,

Form 798 U. S. Treasury Department, Bureau of Internal Revenue, duly sworn to, to comply with (a) the requirements of the Federal Manufacturers Excise Tax Act, and (b) to the carrier in compliance with the Federal Railroad Transportation Act. The purpose was to show that neither of the federal taxes could be assessed against the gasoline in question, since it was a commodity in foreign commerce.

The gasoline was transported from Grand Rapids, Michigan, upon Export Bill of Lading showing the designation to be Canada. Prior to the assessment 50,000 gallons of gasoline were transported by truck over the Ambassador Bridge into Canada until a Federal regulation was issued prohibiting the transportation of inflammable materials over any international bridge. Subsequent to the assessment date all of the gasoline was shipped to Canada by boat, and proof of export has been duly furnished to Midwest Refineries Company, which was necessary so that the gasoline would not be subject to the State Gasoline Tax. When the gasoline arrived by rail at Dearborn it was there unloaded into large storage tanks until such time as a boat could be chartered to trans-ship the gasoline into Canada. This was not possible during the winter months of 1946-1947, for the reason that the Detroit River was frozen and no boats were handling shipments of freight of any kind. It was not until July, 1947, that the Joy Oil Company, Ltd. could charter a boat to transport the gasoline in question. The storage tanks were neither owned by the Joy Oil Company, Ltd., nor the Midwest Refineries Company. They were leased for storage from a third party pending trans-shipment to Canada.

Based upon the assessment the Joy Oil Company, Ltd. was taxed as follows:

General City Tax	$410.96
School Operating Tax	$777.89
School Debt Service Tax	$149.64
Total	$1308.49

all levied in the month of July. As of December 31, 1947, the interest upon that amount is $39.25. There was levied in December, 1947, $478.19 County Operating Tax. The total amount involved being $1825.93.

EXHIBIT "A"

MICHIGAN
STATE TAX COMMISSION
Lansing

December 3, 1947

Mr. Clayton F. Jennings
Shields, Ballard, Jennings & Bishop
1400 Olds Tower Building
Lansing 8, Michigan

Re: Appeal No. 303
Joy Oil Company, Ltd.
1947 Personal Property
Assessment—City of Dearborn

Dear Sir:

You are hereby notified that the State Tax Commission, after investigation and after giving due consideration to all reports and statements submitted at the hearing held in Detroit October 31, 1947, has denied

your appeal claiming exemption from the assessed value of the property described above, it appearing to the Commission that the assessment has been made in compliance with law in accordance with the opinion of T. Carl Holbrook, Assistant Attorney General, our legal counsel. A copy of his opinion is attached hereto for your complete information.

Yours truly,

Arthur E. Hagen
Secretary

AEH/mr
enc.
cc: Dearborn Board of Assessors

State of Michigan
Office of
Eugene F. Black
Attorney General
Lansing

November 12, 1947

State Tax Commission
Lansing, Michigan

Dear Sirs:

The Joy Oil Company, Ltd., is a Canadian corporation, with the stock being held by Margaret Austin, who is the wife of Charles E. Austin who apparently operates and controls the business of the corporation.

Said corporation, at the hearing, admitted the existence of approximately 1,680,000 gallons of gasoline in

three of four tanks located at the Miller Terminal in Dearborn. This gallonage had been accumulated over a fifteen month period from January 1946, during which period, slightly over 10 per cent of the gasoline was drawn out for export to Canada. At the time of assessment, the gallonage in Tank No. 2, which contained 108,000 gallons, was admitted and, therefore, subject to taxation. Tank No. 3 contained no gasoline on April 1st. The gallonage of gasoline in Tank No. 1 was 1,400,000 gallons, and the gallonage in Tank No. 4 was 175,525 gallons, or a total of 1,575,525 gallons. This amount of the gallonage in Tanks Nos. 1 and 4 was not disputed.

The Dearborn Assessor placed an assessment of approximately 5 cents a gallon on the gallonage of gasoline in Tanks Nos. 1 and 4 for a total assessment of $78,780.00.

The corporation purchased this gasoline from Midwest Refineries Company of Grand Rapids, Michigan. At the time of purchase, pursuant to Federal Statutes, it furnished to Midwest Refineries Company an Exemption Certificate duly sworn to. It also furnished Temporary Exemption Certificate, Form 798 U. S. Treasury Department, Bureau of Internal Revenue, duly sworn to, to comply with (a) the requirements of the Federal Manufactures Excise Tax Act, and (b) to the carrier in compliance with the Federal Railroad Transportation Act.

The gasoline was transported from Grand Rapids upon Export Bill of Lading showing the destination to be Canada. The gasoline was shipped by rail from Grand Rapids to Dearborn. It was there unloaded into the tanks, as aforesaid. It is claimed by the corporation that it was thusly stored until a boat could be chartered to trans-ship the gasoline into Canada. It is the further claim that this was not possible to do during the

winter months of 1946-1947, for the reason that the Detroit River was frozen and no boats were handling shipments of freight of any kind. It is further claimed that boats could not be obtained until after July 1, 1947, at which time the gasoline was shipped into Canada. It also developed that 50,000 gallons of gasoline thusly handled, was transported by truck over the Ambassador Bridge, and further shipments were stopped by the fact that such transportation was prohibited of inflammable materials.

It is the contention of the corporation that the City of Dearborn is precluded from collecting a tax on the gasoline in question because of the export clause in the Federal Constitution, which is Article 1, Sections 8, 9 and 10. The pertinent provisions read as follows:

Section 8, sub-paragraph (3):

> "The Congress shall have the power . . . to regulate commerce with foreign nations and among the several states and with the Indian tribes."

Section 9, sub-paragraph (5):

> "No tax or duty shall be laid on articles exported from any state."

Section 10, sub-paragraph (2):

> "No state shall without the consent of Congress lay any imposts or duties on imports or exports except what may be absolutely necessary for executing its inspection laws, and the net produce of all duties and imposts laid by any state on imports or exports shall be for the use of the Treasury of the United States, and all such laws shall be subject to the revision and control of Congress."

The gasoline in question was purchased in the State of Michigan and remained herein for a considerable

length of time. As a general principle, it is stated that the jurisdiction of a state over tangible personal property having an actual situs in the state is not terminated by the intended shipment thereof out of the state, until such property is actually started on its continuous journey, or at least is irrevocably delivered to a common carrier for through transportation, and is thereby disassociated from the general mass of property in the state. *Diamond Match Co. v. Ontonagon*, 188 U. S. 82; *Coe v. Errol*, 116 U. S. 517; *State v. Taber Lumber Co.*, 101 Minn. 186. Although the intent of the Joy Oil Company, Ltd., may have been that the gasoline involved herein was to be for shipment out of the state, it still was the property of the corporation and in its possession and had not been delivered to a transportation company intransit as an export.

It also has been generally held, that a nondiscriminatory state tax on property located therein is not invalid under the commerce clause as applied to such portion thereof as may thereafter become interstate commerce, even though its exportation may be in contemplation at the time of the incidence of the tax. *Heisler v. Thomas Colliery Co.*, 260 U. S. 245; *Hope Natural Gas Co. v. Hall*, 274 U. S. 284.

The assessment levied in this case is not a tax levied by reason of exportation of the gasoline. This is a general tax laid upon all property alike when it is within the taxing district on assessment day. The fact that this gasoline may be exported at a later time is not controlling, as there is no question but that the ownership of said gasoline is in the corporation and could be diverted from exportation of sale within Michigan at the will of the corporation. If this gasoline was in continuous transit or had been delivered to a carrier, then the contention of the corporation could be upheld. But

it appears from the long time that it remained in the storage tanks and from the fact that the gasoline in one of the storage tanks was admittedly taxable, that all the gasoline of the corporation so located in the group of tanks in the location mentioned, were part of the mass property of the corporation and would, therefore, be subject to ad valorem taxation. Intent to export, standing alone, would not defeat the assessment.

I have noted the opinion of the Attorney General, which you supplied me, which affected the application of the Michigan Gasoline Tax to such gasoline so stored in Michigan. The Michigan Gasoline Tax is imposed to fall on the user of the gasoline for the privilege of using the highways of the State. Until the purchaser is one who would use the highways, the Tax does not affix. I do not believe this opinion would govern the question of assessment of this same gasoline under the ad valorem Tax Laws of this State. The gasoline in question was located within the taxing district for a considerable period prior to assessment date for 1947 Taxes and it was at the same location for a considerable time after assessment date. It was in full control of the corporation during all this time and was not in-transit for exportation. From January 1946 through to assessment day in 1947, only about ten per cent had been withdrawn for exportation. If the gasoline had been placed in the tanks for the purpose of exportation, it could have been placed intransit long before it finally was.

It is the opinion of the writer that the City of Dearborn is not precluded from collecting a Tax from the gasoline in question because of the export clause of the Federal Constitution.

Very truly yours,

T. Carl Holbrook,
Assistant Attorney General.

TCH:dm

ORDER GRANTING LEAVE TO APPEAL

AT A SESSION OF THE SUPREME COURT OF HE STATE OF MICHIGAN, Held at the Supreme ourt Room in the Capitol, in the City of Lansing, on he eighth day of January, in the year of our Lord one housand nine hundred and forty-eight.

Present the Honorable

George E. Bushnell,
Chief Justice,

Edward M. Sharpe,
Emerson R. Boyles,
Neil E. Reid,
Walter H. North,
John R. Dethmers,
Henry M. Butzel,
Leland W. Carr,
Associate Justices.

OY OIL COMPANY, LTD.,
Plaintiff and Appellant.

vs. No. 44,000

TATE TAX COMMISSION,
Defendant.

In this cause an application is filed by plaintiff for ave to appeal from an order of the State Tax Com- ission, and a brief in opposition thereto having been led by defendant and due consideration thereof hav-

ing been had by the Court, It is ordered that the application be and the same is hereby GRANTED.

STATE OF MICHIGAN—ss.

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 8th day of January, in the year of our Lord one thousand nine hundred and forty-eight.

(SEAL)

Jay Mertz,
Clerk.

COMPLAINT OF PROPERTY ASSESSED VALUATION

MICHIGAN
STATE TAX COMMISSION
LANSING

APPEAL NO. 303 DATE: June 7, 1947

NAME AND ADDRESS OF OWNER:

Joy Oil Company, Ltd.,
a Canadian corporation
Toronto, Canada

AUTHORIZED COUNSEL OR AGENT:

Clayton F. Jennings, of
Shields, Ballard, Jennings & Bishop
1400 Olds Tower,
Lansing 8, Michigan.

The owner and its duly authorized counsel hereby file complaint that assessment has not been made in compliance with law in accordance with Section 3547, Compiled Laws of 1929, as amended, of the Michigan Property Tax Laws on the following described property appearing on the assessment rolls of

City of Dearborn County of Wayne State of Michigan

Gasoline stored in a bulk plant pending trans-shipment to Canada assessed at $78,780.00

The reason for appeal is that commodities in foreign commerce coming temporarily at rest in Michigan pending trans-shipment to a foreign country are not subject to local taxation. The aforesaid assessment con-

travenes Section 9, sub-paragraph 5, and Section 10, sub-paragraph 2, Article I of the Federal Constitution.

I, legal counsel for the property owner, hereby certify that the above facts are true to the best of my knowledge and belief.

Joy Oil Company, Ltd.
By Clayton F. Jennings,
Counsel.

June 10, 1947

Dearborn Board of Assessors
City Hall
Dearborn, Michigan

Re: Appeal No. 303
Joy Oil Company, Ltd.,
Toronto, Ontario, Canada

Gentlemen:

The Commission is in receipt of a complaint filed by the above-named company from the assessed value of their personal property located in the City of Dearborn, which has been accepted for investigation. As complaints from personal property assessments do not require the filing of a formal complaint blank similar to that used for real property, no copy of the complaint accompanies this letter.

This will serve as notice that an appeal from assessment has been filed as prescribed by the Michigan Property Tax Laws. The Commission requests that no taxes be spread against the present assessed value of this property until the investigation has been completed, and when warranted, a hearing on review held,

d proper determination of assessed value made. In-
porated cities which spread a summer tax may pro-
ed to levy taxes on the valuations approved by the
al board of review, providing that refunds for over
yments will be authorized in the event adjustments
valuations are necessary. Statutory notices and or-
rs relative to hearing will be served as provided in
e statutes.

A copy of this letter is being forwarded to the prop-
y owner as formal acknowledgment of the complaint.

Yours truly,

Arthur E. Hagan,
Secretary.

EH/mr

: Mr. Clayton F. Jennings, Counsel
1400 Olds Tower,
Lansing 8, Michigan

October 24, 1947

r. Clayton F. Jennings
ields, Ballard, Jennings & Bishop
00 Olds Tower Building
nsing 8, Michigan

Re: Appeal No. 303
Property Owner Joy Oil Company, Ltd.

ar Sir:

You are hereby notified that the State Tax Commis-
on has ordered a review of the assessment rolls on
ich the property involved in the above appeal is

entered. Hearings on review will be held in Room 1302, Michigan Detroit Office Building (formerly Cadillac Square Building), Detroit, Michigan, on October 29, 30 and 31, 1947.

The above appeal has been scheduled for hearing on Friday, October 31, 1947, at 10:00 (A. M.) Eastern Standard Time.

Yours truly,

Arthur E. Hagen,
Secretary

AEH:mr

TAX EXAMINER'S REPORT

Appeal No. 303 Dearborn, Michigan

Joy Oil Company, Ltd.
A Canadian Corporation

1947 Assessed Valuation $78,780.00

The law firm of Shields, Ballard, Jennings and Bishop of Lansing, Michigan, duly authorized counsel for Joy Oil Company, Ltd., has filed a complaint with the State Tax Commission that the assessment of $78,780.00 placed upon the gasoline located in tanks in the City of Dearborn on April 1, 1947, "has not been made in compliance with law in accordance with Section 3547, C. L. 1929, as amended." The reason for the appeal is that the 1,575,000 gallons of gasoline in question were "commodities in foreign commerce coming temporarily at rest in Michigan pending trans-shipment to a foreign country (Canada) and are not subject to taxation". It is further the contention of com-

sel for appellant that "the aforesaid assessment contravenes Section 9, sub-paragraph 5, and Section 10, sub-paragraph 2, Article 1, of the Federal Constitution".

Pursuant to instructions from the State Tax Commission, a thorough analysis of this matter was made and the following report is hereby submitted:

The Joy Oil Company, Ltd., is a Canadian corporation controlled by one Charles E. Austin, although the latter owns no stock in the corporation, the stock being held by Mrs. Margaret Austin, wife of Charles E. Austin. There is no doubt, however, that Mr. Austin is the guiding hand in the prosecution of this business. At a hearing before the Dearborn Board of Review Mr. Austin appeared in person and admitted the existence of approximately 1,680,000 gallons of gasoline in three or four tanks located at the Miller Terminal in Dearborn. His testimony has further brought out the fact that this gallonage has been accumulated over a fifteen-month period from January, 1946, during which period slightly over 10% of the gasoline was drawn out for export to Canada. It was further pointed out at the aforementioned hearing that of the four gasoline storage tanks located at Miller Terminal in Dearborn the gallonage in Tank No. 2 which contained 108,000 gallons on April 1st was subject to taxation, the latter not having been earmarked by Mr. Austin for transshipment to Canada. It was also pointed out and agreed that Tank No. 3 contained no gasoline on April 1st.

Mr. Austin did not object to the gallonage computation of Dearborn's Assessor who computed the taxable gallonage in Tank No. 1 at 1,400,000 gallons and the gallonage in Tank No. 4 at 175,525 gallons, or a total of 1,575,525 gallons subject to taxation in accordance

with the Dearborn Assessor, the Board of Review and the Corporation Council.

The Dearborn Assessor, therefore, placed an assessment of approximately five cents a gallon on the above gallonage, or a total of $78,780.00.

Following our analysis of the facts in this case we requested the counsel for the Joy Oil Company, Ltd., to file with the State Tax Commission a brief, setting forth all facts as to why, in their opinion, the property in question should not be assessed by the City of Dearborn. At the preparation of this report; no such brief has yet been filed. (Brief is in file).

Our analysis of the facts in this case, fully backed by legal authority, leads us to the conclusion that the gasoline in question was not in interstate commerce and recommend that the State Tax Commission deny this appeal.

Quoting from a recent decision from the Circuit Court for the County of Wayne in the case of Charles E. Austin, Inc., vs. Harry F. Kelly, Secretary of State, (an opinion written by Judge Guy Miller) "When it (the gasoline) crosses the Michigan State line and reaches the company's property in the City of Dearborn, it then comes to rest. The transportation then ceases. When this gasoline arrives within the State of Michigan, the transportation is interrupted and the property transported becomes a part of the general mass of property of plaintiff company and is located in the State of Michigan. The point where the parties diverge in their theories is as to the nature of the transportation. Plaintiff claims that the gasoline, which eventually came into the hands of the Canadian corporation, came there as a result of a continuous act of transportation and that the gasoline was, therefore, always in interstate and foreign commerce and not subject to taxation. The State claims that these ship-

ments into Canada were shipments from the stock on hand in Michigan and that a different method of procedure should have been followed and has been followed in the computation of the tax than would be followed in the case of a single uninterrupted shipment in interstate and foreign commerce. This difference lies in this: If the shipment had merely been interrupted for the purpose of storage awaiting transfer into the tanks of a steamer en route to Canada, no tax would have been assessable or would have been paid upon such gasoline. It would merely have gone into the tanks as a matter of storage in transit. The testimony does not establish that it went into storage in this way in transit. The testimony does establish that it became incorporated in the general mass of plaintiff's property within the State of Michigan when it came to rest in the storage tank. The testimony establishes affirmatively that shipment into Canada was a new transaction."

We follow the reasoning of Judge Miller in the above case and claim a direct analogy between the above case and the matter now before the State Tax Commission. It is our conclusion that mere intent to eventually export this gasoline to Canada is not sufficient to place the goods in the classification of interstate commerce. A leading and illustrative case on this point is Coe vs. Errol, 116 U. S. 517. In this case the plaintiff, a resident of New Hampshire, owned spruce logs drawn down during the winter before from the mountains of New Hampshire to the banks of a stream in the town of Errol, New Hampshire, thence floated down the river in the spring to the State of Maine. It was held in this case by the United States Supreme Court that they were properly appraised for taxation in Errol. The court decided that the products of a state, though intended for exportation and partially prepared for

that purpose, are liable to be taxed like other property at the point where they are so deposited and that they are not exempted from taxation by the owner's preparation to ship them. In this case it was further pointed out that when products of the farm or forest are collected and brought in from the surrounding country to a town or station serving as an *entrepot* for that particular region, whether on a river or a railroad, such products are not yet in process of transportation, but they are part of the general mass of property in the state, subject to its jurisdiction, the same way as other property therein. It was emphasized that mere intention to export is not sufficient. The court declared that if the intention to export were sufficient, in many states there would be nothing left to tax but real property.

TEMPORARY EXEMPTION CERTIFICATE

Original No. 1.

Tax on amount paid for transportation of property
Section 3475 Internal Revenue Code

Name—Joy Oil Company Limited
(Shipper or consignee who paid the transportation charges)

Address—3949 Puritan Ave., Detroit, Michigan

certifies that the shipment described below is made pursuant to a contract, order, proposal of purchase, or other written evidence of intention to export, antedating delivery of the shipment to the carrier, and claims exemption from the tax on the amount paid for the transportation of the property which is to be exported, or shipped to a possession of the United States.

Name of Carrier	Property Shipped Commodity Gasoline	Weight
Pere Marquette Railway Company	Car # PTLX 7164	53988 Lbs.
	Car # PTLX 5078	54074 Lbs.

Date Shipped From Point of Origin—Jan. 3, 1946.
Point of Origin of Shipment—Grandville, Michigan.
Port of Exporation—Detroit, Michigan.
Transportation Charge: Date Paid—Jan. 5, 1946.
Amounts Paid—$53.99 and $54.07.

EXCISE TAX — FORM J
(Revenue Act of 1935 amending 1932 Act)

Mid-West Refineries, Inc., Grand Rapids, Michigan
(Heading: Showing name, Address, Etc. of Vendor Company)

EXEMPTION CERTIFICATE

(Purchases for Export or for Resale for export — Section 627 of 1932 Revenue Act as amended)

M. Humble, being duly sworn, says:

That he is the Agent of the Joy Oil Company Limited
(Title) (Name of Vendee)

or is himself of the vendee of the articles specified below, in the accompanying order or on the reverse side hereof; that such articles are purchased to fill existing or future orders for delivery to a foreign destination or possession of the United States, or for resale to another person engaged in the business of exporting who will export the articles: that the articles will be

transported to their foreign destination or shipped to a possession of the United States in due course prior to use or further manufacture and prior to any resale except for export or shipment to a possession of the United States.

It is agreed by the vendor and vendee that proof of actual export as required by Articles 25, 26 and 27 of Regulations 44 revised will be furnished by the vendee within six months or the undersigned will pay the Federal excise tax, including interest, to said vendor on that portion of the articles for which proof of actual export has not been furnished.

(Name of Purchaser) Joy Oil Company Limited

By .....
(Signature of Officer or Agent)

Toronto, Ontario, Canada
(Address of Purchaser)

Gasoline Purchase February 1946

(Verification)

UNIFORM STRAIGHT BILL OF LADING
ORIGINAL — NOT NEGOTIABLE
PERE MARQUETTE RAILWAY COMPANY

RECEIVED, subject to the classifications and tariffs in effect on the date of the issue of this Bill of Lading, at Alma, Mich., 31 Jan. 1946 from Mid-West Refineries, Inc. the property described below * * * * * *

Consigned to Joy Oil Co. Ltd. % Miller Road Terminal
Destination—Detroit. State of Mich. County of
Route—P M
Delivering Carrier ..... Car Initial PTLX
Car No. 7516

No. Pkgs.	Description of Articles, Special marks, and exceptions	Weight	Class or Rate	Check Column
	8193 Shell Gals Gasoline (Housebrand) Inflammable Placards Applied	54,074	6.6	96
	Net Gals 8377			
	Temp 28			
	Seal 143227			
	For Export to Canada			
	Shippers Load & Count.			

Mid-West Refineries, Inc. Shipper. L. L. Loesel Agent
Per L. Fandell

PERE MARQUETTE RAILWAY COMPANY

Consignee—Joy Oil Co. LTD Freight Bill No. 34898
Detroit, Mich. 1-22-46

Destination % Miller Rd. Terminal
Route PM

Waybilled from—RGE 545 Alma Mich.
Waybill Date and No.: Date—1-19-46. No.—13053.
Full Name of Shipper—Midwest Refineries Inc.
Car Initials and No.—GATX 18746.

Number of Packages, Articles and Marks
10103 Gals Housebrand Gasoline
Inflammable Plac Appld
at 6 6 Per Gal.
SLC for Export to Canada

Weight	Rate	Freight	Advances	Total
66680	09	6001		6001

PM6755 15/A/

EXCISE TAX — FORM K

(Rev. Act of 1935 amending 1932 Act)

TO MID-WEST REFINERIES, INC.

PROOF OF EXPORT

(Section 627 of 1932 Revenue Act, as amended)

M. P. Austin, being duly sworn, says that he is an Officer of the Joy Oil Company Limited, the vendee, or is himself the vendee, and purchased from Mid-West Refineries, Inc., the articles specified below, or on the

reverse side hereof, tax-free under an exemption certificate for export or for resale for export; that said articles (exceptions, if any, noted below) were in fact exported in due course prior to use, further manufacture or resale in the United States except for export; that a copy of the export bill of lading (or other evidence of export consisting of):

Dominion of Canada Customs Warehouse Entry No. 28356 E. dated February 9, 1946

Dominion of Canada Customs Warehouse Entry No. 29699 E. dated March 2, 1946

Dominion of Canada Customs Warehouse Entry No. 30664 E. dated March 16, 1946

Dominion of Canada Customs Warehouse Entry No. 31836 E. dated March 30, 1946

Dominion of Canada Customs Warehouse Entry No. 2387 E. dated April 20, 1946

Dominion of Canada Customs Warehouse Entry No. 4311 E. dated May 4, 1946

Dominion of Canada Customs Warehouse Entry No. 5261 E. dated May 11, 1946

Dominion of Canada Customs Warehouse Entry No. 7192 E. dated May 25, 1946

Dominion of Canada Customs Warehouse Entry No. 9225 E. dated June 8, 1946

Dominion of Canada Customs Warehouse Entry No. 11224 E. dated June 22, 1946

Dominion of Canada Customs Warehouse Entry No. 12811 E. dated July 6, 1946

Dominion of Canada Customs Warehouse Entry No. 13843 E. dated July 16, 1946

Dominion of Canada Customs Warehouse Entry No. 37963 J. dated July 29, 1947

Dominion of Canada Customs Warehouse Entry No. 58185 J. dated August 22, 1947

covering the exportation thereof is available for inspection by Government officers at the office of Joy Oil Company Limited at (Street No.) 67 Carlton Street, in the City of Toronto, Ontario.

Joy Oil Company Limited

By M. P. Austin
(Officer or Agent)

(Verification)

THIS CERTIFICATE COVERS:

Purchases of gasoline shipped during January and February 1946, by Mid-West Refineries, Inc., from Alma and Grandville, Michigan, in tank cars said to contain 1,447,893 United States gallons of gasoline.

CERTIFICATION BY THE MICHIGAN STATE TAX COMMISSION IN THE MATTER OF THE APPEAL OF JOY OIL COMPANY, LTD.

STATE OF MICHIGAN
IN THE SUPREME COURT

JOY OIL COMPANY, LTD.,
a Canadian corporation,

vs.

STATE TAX COMMISSION,

WHEREAS, In pursuance of the application for Leave to Appeal, as filed in this Court by the Joy Oil Company, Ltd., a Canadian corporation, and hearing to be had on same by this Court; and in compliance with Court Rule; and

In furtherance of providing complete Record of all proceedings had before the Michigan State Tax Commission, said State Tax Commission, through its Secretary, hereby certifies the following records, documents, briefs, and all instruments affecting the action and Order of the said State Tax Commission entered on December 3, 1947, upholding the 1947 Personal Property Assessment of the City of Dearborn;

Arthur E. Hagen, Secretary of the Michigan State Tax Commission, having complete custody and charge of the various appeals filed with the State Tax Commission, and particularly, the appeal of the Joy Oil Company, Ltd., on its 1947 Personal Property Assessment made by the City of Dearborn on gasoline in storage from January 1946, to July 1946, does hereby certify and return to this Court all the records, documents and briefs as submitted to the State Tax Commission during the hearing of the appeal of said Joy Oil Company, Ltd., included in this return, known as Appeal No. 303 of the State Tax Commission for the year 1947, are the following documents:

Complaint of Property Assessed Valuation of Joy Oil Company, Ltd., dated June 7, 1947, addressed to the State Tax Commission;

Letter, under date of June 7, 1947, from the law firm of Shields, Ballard, Jennings & Bishop, addressed to the Michigan State Tax Commission, which accompanied the Complaint;

Copy of letter under date of June 10, 1947, from the Secretary of the State Tax Commission addressed to the Dearborn Board of Assessors, with copy sent to Mr. Clayton F. Jennings, Attorney for Joy Oil Company;

Notice of Hearing of the appeal of Joy Oil Company, Ltd., as sent to counsel for Joy Oil Company, dated October 24, 1947;

Report of Tax Examiner of the State Tax Commission to the State Tax Commission, re: the Appeal of Joy Oil Company, Ltd.;

Work Sheets of Examiner for State Tax Commission;

Photostatic copy of File No. 306,985, Wayne County Chancery;

Brief on Behalf of Joy Oil Company, Ltd.;

Letter of September 19, 1947, from Shields, Ballard, Jennings & Bishop;

Brief on Behalf of the City of Dearborn;

Letter dated November 12, 1947, from Joel K. Underwood, Office of Corporation Counsel, City of Dearborn;

Reply Brief on Behalf of Joy Oil Company, Ltd., enclosing exhibits;

Letter dated November 20, 1947, from Shields, Ballard, Jennings & Bishop, which transmitted Appellant's Reply Brief;

Opinion of T. Carl Holbrook, Assistant Attorney General, as attorney for State Tax Commission;

Determination of the State Tax Commission denying the appeal of the Joy Oil Company, Ltd.;

Letter dated December 3, 1947, to Shields, Ballard, Jennings & Bishop from the Secretary of the State Tax Commission, notifying them of the action and Order of the State Tax Commission, re: the Appeal of Joy Oil Company, Ltd.; and copy of this was forwarded to Dearborn Board of Assessors.

At the scheduled hearing of this Appeal, there is no dispute as to the facts and same are fully set forth in the Briefs.

This Certificate made at the offices of the State Tax Commission in the State Office Building in the City of Lansing, Ingham County, Michigan, this 30th day of December, A. D. 1947.

STATE TAX COMMISSION

(SEAL)

s/d Arthur E. Hagen,
Secretary.

DECISION OF THE MICHIGAN SUPREME COURT

STATE OF MICHIGAN
SUPREME COURT

JOY OIL COMPANY, LTD.,
Plaintiff and Appellant,

vs.

STATE TAX COMMISSION,
Defendant and Appellee.

BEFORE THE ENTIRE BENCH.

BOYLES, J.

The question here for decision is whether a quantity of gasoline stored in tanks in the City of Dearborn pending transshipment to Canada is liable for an ad valorem tax. The facts are not in dispute and, as hereinafter shown, control decision.

On December 29, 1945, the appellant Joy Oil Company, Ltd., a Canadian corporation not authorized to do business in Michigan, purchased 1,500,000 gallons of gasoline from the Mid-West Refineries, shipped it by rail from Grandville and Alma to itself as consignee, at Detroit, and stored it in large storage tanks in Dearborn pending transshipment to Canada. The bills of lading from the Pere Marquette railroad were each marked "For export to Canada." However, the bills of lading were not through bills from Grandville and Alma to Toronto, Canada, but the shipments were consigned to appellant at Detroit, the place of delivery being within a few feet of the boundary line between Detroit and Dearborn, and the storage tanks being near the railroad siding but over the line in Dearborn. All of the bills of lading were issued in January, 1946, the shipments were made beginning in January and accumulated until some time in February when the final delivery was made to appellant at said storage tanks leased by it located in the City of Dearborn.

On April 1, 1947, all of the above gasoline was in said tanks with the exception of a small amount which had previously been exported to Canada by truck over the Ambassador bridge. Further movement of gasoline across said bridge was stopped by the authorities and there was a delay of about 18 months before said gasoline in storage was transported to Canada. Commencing in July, 1947, the gasoline was transported to Canada by boat.

On April 1, 1947, the city of Dearborn assessed said gasoline for ad valorem taxes, and the tax now amounts to $1,825.93. Appellant appealed from said assessment to the board of review of the city of Dearborn, which sustained the tax; whereupon appellant appealed to the Michigan State tax commission, where the tax was again

upheld. On leave granted Joy Oil Company, Ltd., now prosecutes an appeal to this Court in the nature of certiorari from said decision of the State tax commission.

It is the claim of the appellant that the gasoline in question was a commodity in foreign commerce, and that the city of Dearborn is precluded from imposing the tax under the export-import clause of the United States Constitution.

Summarizing the factual situation, said gasoline was shipped intrastate by rail to appellant in Dearborn, stored there about 18 months in leased tanks, then transshipped by boat to Canada, and on April 1, 1947, after the gasoline had been stored in Dearborn about 15 months the city assessed it for ad valorem taxes. Was it exempt, as a commodity in foreign commerce?

The pertinent provisions of the United States Constitution are as follows:

"The Congress shall have power * * *

"(3) To regulate commerce with foreign nations, and among the several states, and with the Indian tribes;" Art. 1, Sec. 8.

"No tax or duty shall be laid on articles exported from any State." Art. 1, Sec. 9 (5).

"No State shall, without the consent of the Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imports, laid by any State on imports or exports, shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress." Art. 1, Sec. 10 (2).

In support of its claim that the gasoline in question was exempt from taxation by the city of Dearborn, appellant relies on the principles of law laid down in the following cases:

Spalding & Bros. vs. Edwards, 262 U. S. 66 (67 L. Ed. 865);

Carson Petroleum Co. vs. Vial, 279 U. S. 95 (73 L. Ed. 626);

Richfield Oil Corp. vs. State Board of Equalization, 329 U. S. 69 (91 L. Ed. 123).

But the facts in the case at bar do not fit into the principles of law announced in the above decisions. In the Spalding Case, *supra*, the transportation was practically continuous from the time the shipment of merchandise was started by rail until the merchandise was placed on board ship at seaboard to continue the transportation to the purchaser in Venezuela. Spalding, the shipper (corresponding to the Mid-West Refineries in the case at bar), was directed to deliver the merchandise to the Atlantic & Caribbean Steam Navigation Company in New York, and did so. The collector of internal revenue in New York levied an excise tax on the merchandise shipment and the court set the tax aside. In so doing, the court said:

> "The very act (of the shipper) that passed the title and that would have incurred the tax had the transaction been domestic, committed the goods to the carrier that was to take them across the sea, for the purpose of export and with the direction to the foreign port upon the goods. The expected and accomplished effect of the act was to start them for that port."

Such was not the situation in the case at bar, where the gasoline was shipped by the refineries by rail for delivery to the appellant at Detroit, and the continuity of transportation was interrupted there by placing the gasoline in storage tanks where it remained for approximately 18 months before appellant procured ship transportation for Canada. Under these circumstances, marking the railroad bills of lading "For export to Canada" did not make the transportation by railroad and ship a continuous one within the circumstances of the Spalding Case.

The question whether the State in which the goods are stored may levy a tax depends upon whether there is a continuity of transportation. In turn, this becomes a question of fact, and depends upon the circumstances of each individual case. In the Carson Petroleum Co. Case, *supra,* relied upon by appellant, oil was purchased by the Carson Company in various States, transported by railroad tank cars, and unloaded into storage tanks at St. Rose, a few miles above New Orleans, for shipment to foreign ports. The rail shipments were on an export rate, lower than the domestic rate. The oil was of a grade made especially for export. The tanks and equipment at St. Rose were made especially for unloading oil from tank cars and loading it aboard ships for export. No oil was sold there and the only business conducted was transfer of the oil from tank cars into storage tanks for reloading into ships. The journey was made as continuous as possible, depending on the quantity of oil on hand and the capacity of ships available for export. The court found:

> "On account of the demurrage charges on tank cars, as well as on steamships, it would be impracticable to carry on the export business by any other

method than by storing the oil in large storage tanks as the train loads of oil arrive, and shipping from the accumulation when the ships arrive. The oil is shipped from the storage tanks in the same condition in which it was received from the tank cars without being treated in any way. The oil is never kept on hand at St. Rose any longer than is necessary. The quantity on hand is always awaiting either the arrival of a ship or the accumulation of a sufficient quantity to load a ship.

* * *

"The crucial question to be settled in determining whether personal property or merchandise moving in interstate commerce is subject to local taxation is that of its continuity of transit."

After discussing many cases the court held that the transportation in that case was continuous, and in its conclusion referred to other decisions with the following comment:

"The quickness of transshipment in both cases was the chief object each exporter plainly sought. In both cases the selection of the point of shipment and the equipment at that point were solely for the speedy and continuous export of the product abroad, and for no other purpose."

In the Richfield Oil Corp. Case, *supra*, mainly relied upon by appellant, the facts likewise distinguish the case from the one at bar. The Richfield Oil Corporation was engaged in producing and selling oil in California. It transported its oil by pipeline from its refinery to its storage tanks at seaboard and there pumped the oil into vessels in foreign commerce. Its delivery was "to the

order of the Naval Secretary, Navy Office, Wellington, into N. Z. Naval tank steamer R.F.A. 'Nucula' at Los Angeles, California," to be consigned to the naval officer-in-charge at Auckland, New Zealand. The State of California levied a tax on the oil under the State retail sales tax act. The United States supreme court held that the tax was unconstitutional under article 1, Sec. 10 of the United States Constitution hereinbefore quoted. The continuity of the movement by pipeline and by shipload to the foreign port was not substantially interrupted.

In the case at bar, the destination of the gasoline on the original rail shipments was Detroit, Michigan. If the rail shipments had been billed to Toronto, Canada, the transportation might have been continuous by rail across or under the Detroit river, to Canada. The break of the continuous shipment at Dearborn was for the profit and convenience of the appellant, to use ship movement to Toronto at a lower rate. The gasoline remained in storage in Dearborn for about 15 months, until on tax day, April 1, 1947, it was assessed by the city for ad valorem taxes. It was not transshipped by boat to Canada for approximately three months thereafter. There was no continuity of transportation at Detroit or Dearborn which would require exemption from taxation under the decisions relied upon by appellant.

In *Coe vs. Errol*, 116 U. S. 517, often referred to as the leading case, logs cut during the winter in New Hampshire were hauled to a river town in that State, to be floated by river to a place in Maine. They were detained in New Hampshire by low water, and while still there were assessed for taxes. The court upheld the tax, saying:

"There must be a point of time when they cease to be governed exclusively by the domestic law and begin to be governed and protected by the national law of commercial regulation, and that moment seems to us to be a legitimate one for this purpose, in which they commence their final movement for transportation from the State of their origin to that of their destination. When the products of the farm or the forest are collected and brought in from the surrounding country to a town or station serving as an intrepot for that particular region, whether on a river or a line of railroad, such products are not yet exports, nor are they in process of exportation, nor is exportation begun until they are committed to the common carrier for transportation out of the State to the State of their destination, or have started on their ultimate passage to that State. Until then it is reasonable to regard them as not only within the State of their origin, but as a part of the general mass of property of that State, subject to its jurisdiction, and liable to taxation there, if not taxed by reason of their being intended for exportation, but taxed without any discrimination, in the usual way and manner in which such property is taxed in the State.

* * *

"The point of time when State jurisdiction over the commodities of commerce begins and ends is not an easy matter to designate or define, and yet it is highly important, both to the shipper and to the State, that it should be clearly defined so as to avoid all ambiguity or question.

* * *

"But no definite rule has been adopted with regard to the point of time at which the taxing power of the State ceases as to goods exported to a foreign country or to another State. What we have already said, however, in relation to the products of a State intended for exportation to another State will indicate the view which seems to us the sound one on that subject, namely, that such goods do not cease to be part of the general mass of property in the State, subject, as such, to its jurisdiction, and to taxation in the usual way, until they have been shipped, or entered with a common carrier for transportation to another State, or have been started upon such transportation in a continuous route or journey."

Counsel for appellant relies on cases holding that the ment is in interstate (ergo, foreign) transportation n delivery is made by the shipper for transportation rail to another State. These decisions might apply to case at bar if the original delivery of gasoline had n made by bill of lading for Toronto, Canada. On the trary, the gasoline was billed for shipment by rail to roit as the destination. The notation on the bills of ing "For export to Canada" did not change the desti- ion. As said in *Minnesota vs. Blasius*, 290 U.S. 1, at e 9:

"The 'crucial question,' in determining whether the State's taxing power may thus be exerted, is that of 'continuity of transit'. *Carson Petroleum Co. vs. Vial*, 279 U.S. 95, 101.

"If the interstate movement has not begun, the mere fact that such a movement is contemplated does not withdraw the property from the State's

power to tax it. *Coe vs. Errol*, 116 U.S. 517; *Diamond Match Co. vs. Ontonagon*, 188 U.S. 82.

It must be admitted that excerpts from many cases could be quoted in support of appellant's contention here. But the fundamental rule of law in these cases is that decision depends upon what is meant by continuity of transportation, and in turn this depends upon the facts of each case. Under the circumstances of the case at bar, we conclude that there was no continuity of transportation from the point of shipment to destination in foreign commerce. The gasoline in Dearborn on April 1, 1947, was subject to ad valorem taxation.

Affirmed, with costs.

STATE OF MICHIGAN
THE SUPREME COURT

I, Jay Mertz, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing contains the transcript of the record from the Circuit Court for the County of Wayne as prepared and printed under the Rules of the Supreme Court of Michigan, and full, true and complete copies of the pleadings, record entries and proceedings, including the opinion, had and filed in the Supreme Court of Michigan, except the full captions, titles and endorsements omitted in pursuance of the Rules of the Supreme Court of Michigan, in a certain cause in said Supreme Court wherein Joy Oil Company, Ltd. was Appellant, and State Tax Commission was Appellee, No. 44,000, as full, true and complete as

e originals of the same remain on file and of record in
y office.

IN TESTIMONY WHEREOF, I hereunto sub-
scribe my name and affix the seal of the
Supreme Court of the State of Michigan, at
the office in the City of Lansing, Michigan,
this 11th day of August, A.D. 1948.

Jay Mertz, Clerk of the
Supreme Court of Michigan.

SEAL)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 11, 1948

The petition herein for a writ of certiorari to the
Supreme Court of the State of Michigan is granted, and
the case is transferred to the summary docket.

And it is further ordered that the duly certified copy
of the transcript of the proceedings below which accom-
panied the petition shall be treated as though filed in re-
sponse to such writ.